

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed November 25, 2008. Currently, claims 20, 22, 24-26, 34-37, and 39-44 remain pending. Claims 20, 22, 24-26, 34-37, and 39-44 have been rejected. Favorable consideration of the following remarks is respectfully requested. In order to advance prosecution, claims 20, 34, 39, 40, 43, and 44 have been amended to clarify the relationships among the elements. Claim 22 has been amended to correct a typographical error.

### **Claim Rejections – 35 USC § 103**

Claims 20, 22, 25-26, 34-36, and 39-44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft et al. (U.S. Patent No. 6,007,558), hereinafter Ravenscroft, in view of Vargas et al. (U.S. Patent No. 6,419,681), hereinafter Vargas. After careful review, Applicant must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP § 2143.03). As acknowledged by the Examiner, nowhere does Ravenscroft appear to disclose a filtering device comprising a plurality of struts having a weakened or reduced cross-sectional area region being configured to fail releasing the anchoring member from a stem portion. The filtering device of Ravenscroft releases from the vessel intact by permitting “the hooks to bend and straighten in response to withdrawal forces”. (Abstract; see also col. 2, lines 58-61) Ravenscroft emphasizes that “The structure of the hooks is important.” (Col. 4, line53.) Accordingly, any significant modification of the hooks of Ravenscroft such that they do not bend and straighten and/or any modification which results in the separation of the hooks from the remainder of the filter rather than allowing them to be withdrawn longitudinally from the endothelial overgrowth would require an impermissible alteration of the operating principle of Ravenscroft.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the

references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (MPEP 2143.01, VI.)

Further, nowhere does Vargas appear to remedy the additional shortcomings of the Ravenscroft reference. The Examiner's characterization of Vargas includes the statement, "a plurality of struts each having a weakened region or reduced cross-sectional area ("frangible") region 402 being configured to fail ... or a means for releasing the portion 406 from portion 404 containing the plurality of struts", apparently confirming that the principle of operation of the combination proposed by the Examiner would rely upon release of a (single) anchoring portion rather than the bending and straightening of Ravenscroft's multiple struts. Applicants note that the Examiner's description of the device appears to have reversed the role of elements as taught by Vargas. As will be seen in Fig. 22 of Vargas in which the numbered elements appear, Vargas contemplates a single fixed diameter tubular anastomosis device 404, depicted in flattened form for convenience, which is implanted by severing all links of section 402. Struts 424 are in discard portion 406 and not in the implant 404. Accordingly, struts 424 do not appear to be implanted in the body as part of the anastomosis device and fracturing frangible joint 402 does not release the implanted anastomosis device 404 from the body.

As taught by Vargas, the struts 424 appear to be removed from the body along with the discard portion 406 as part of the implant device and so do not form implanted struts which may be released from an anchoring group when it is desirable to remove a device of which the struts are a part. Only when all connections 402 are severed is the single implantable unit 404, incorrectly characterized by the Examiner as an anchoring member, released. The single implantable body of Vargas, attached as it is to multiple struts prior to implantation, does not appear to render obvious multiple struts each having a distal tip configured to act as an anchor, said anchors being releasably attached to their respective struts. The fixed diameter of the implanted portion 404 of Vargas would suffice to dissuade one of ordinary skill in the art from attempting to use the implant as an anchor in a filter which is delivered through the vessel in a compressed state and expands to engage the walls at the diameter of the vessel at that point, a diameter which may vary with pulsate blood flow. Therefore, Ravenscroft in view of Vargas does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of

obviousness. For at least these reasons, and others, Ravenscroft in view of Vargas does not appear to render obvious independent claims 20, 34, 39, 40, and 43 and Applicant respectfully requests that the rejections be withdrawn.

Additionally, for similar reasons, as well as others, claims 22, 25-26, 35-37, and 41-42, and 44, which depend from claims 20, 34, 39, 40, and 43 and include significant additional limitations, are believed to be patentable over Ravenscroft in view of Vargas and Applicant respectfully requests withdrawal of the rejections.

Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft in view of Vargas as applied to claim 20 and further in view of El-Nounou et al. (U.S. Patent No. 5,242,462). After careful review, Applicant must respectfully traverse this rejection.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03)

El-Nounou et al. is said to teach a filter device with a body member having a bore. The disclosure of El-Nounou et al. does not appear to overcome the deficiencies of Ravenscroft or of Ravenscroft in view of Vargas as applied to claim 20, discussed above, from which claim 24 depends. (MPEP 2143.03) Accordingly, claim 24 appears to be nonobvious and Applicant respectfully requests that the rejection be withdrawn.

Claim 37 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft in view of Vargas as applied to claim 34 and further in view of Ambrisco et al. (U.S. Patent No. 6,007,557). After careful review, Applicant must respectfully traverse this rejection.

Ambrisco et al. is said to teach a reduced cross-sectional area defined by an opening in the strut. The disclosure of Ambrisco et al. does not appear to overcome the deficiencies of Ravenscroft or of Ravenscroft in view of Vargas as applied to claim 34, discussed above, from which claim 37 depends. (MPEP 2143.03) Accordingly, claim 37 appears to be nonobvious and Applicant respectfully requests that the rejection be withdrawn.

In regard to the Response to Arguments, the independent claims in question have been amended to more clearly indicate that the multiplicity of anchoring members are individually disposed at the distal tips of single struts and are released singly from the strut to which they are attached by a weakened region. The anastomosis device, said to teach a detachable anchoring member, of Vargas appears to be a single unit, released only when each and every shearable connection within frangible section 402 is fractured. Rather than being released from a vessel for removal when the frangible section is fractured, the device of Vargas is implanted by that action. Vargas does not appear to provide elements which are capable of releasing a medical device from a vessel, but rather releases a medical device into the body. One of ordinary skill in the art attempting to provide a removal mechanism would not turn to the implant delivery system of Vargas for guidance, particularly in an effort to modify the filter of Ravenscroft which sets out to leave no portion of the device behind. A device in which the multiple bendable and straightenable, fully removable hooks of Ravenscroft are replaced by single frangible joint section 402 which necessarily leaves fixed diameter tubular implant 404 in the body impermissibly alters the principle of operation of Ravenscroft as discussed above.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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/glenn m. seager/

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